

No. 9055

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In the  
United States  
Circuit Court of Appeals  
For the Ninth Circuit

Vol  
2221  
see Vol 2220

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CITY AND COUNTY OF SAN FRAN-  
CISCO, (a municipal corporation),  
*Appellant,*  
vs.  
UNITED STATES OF AMERICA,  
*Appellee.*

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Reply Brief of Amici Curiae

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1. SECTION 9 (S) OF THE RAKER ACT PROVIDES THAT SAID ACT MUST BE ACCEPTED BY CITY OF SAN FRANCISCO.

THE RAKER ACT SEEKS TO IMPOSE AN OBLIGATION OF ONE HUNDRED AND FIFTY MILLION DOLLARS AND MUST BE ACCEPTED BY THE ELECTORS BY A TWO-THIRDS VOTE.

At pages 67 and 68 of Appellee's brief it is stated that the appellant has treated section 6 of the Raker Act as a contractual covenant; that this contention is

fallacious and that the Raker Act is a law and that it is binding as a law upon the City of San Francisco.

We cannot agree with counsel.

Section 9 (s) of the Raker Act provides as follows:

“That the grantee shall file with the Secretary of the Interior, within six months after the approval of this act, its ACCEPTANCE of the terms and CONDITIONS of this grant.” (R. 34.)

This section above is a concession that the Raker Act is not to bind the City until the City files an acceptance with the Secretary of the Interior.

The Act contemplates binding the City to expend some One hundred and fifty million dollars.

No authority can impose such an obligation upon the City without its consent by a vote of the people of the City of San Francisco.

**2. THE EXPRESS CONDITION OF THE RAKER ACT SHALL NOT INTERFERE WITH THE LAWS OF THE STATE OF CALIFORNIA RELATING TO THE CONTROL, APPROPRIATION, USE OR DISTRIBUTION OF WATER FOR MUNICIPAL OR OTHER USES.**

Section 11 of the Raker Act provides:

“That this Act is a grant upon certain express conditions specifically set forth herein, and nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the State of California relat-

ing to the control, appropriation, use or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in CONFORMITY with the laws of said State.” (R. 36.)

In this action the Secretary of the Interior is carrying out one of the provisions of this Act, to wit: Section 6 thereof.

In this suit the Secretary is not conforming with Section 18 of Article XI of the California Constitution which provides that a municipality cannot incur an obligation without a two-third vote of the electors.

This suit is violating Section 9, Article XII of the Charter of the City of San Francisco, which provides that the bonded debt of the said City shall not exceed twelve per cent of the assessed value of the property in the City.

A fair interpretation of this section 11 of the Raker Act would be that if the Act interfered with any mining claim or water right that the Act must give way to the mining locator, that if the Act interfered with Constitutional restrictions as to incurring obligations in carrying out the Raker Act, the Raker Act must give way. If Section 11 does not bear this construction then why was it placed in the Act?

This Section 11 means that right at the start an estimate of all expenditures to be incurred under this Act should have been submitted to a vote of the people;

this would have been conforming to the laws of the State of California.

Section 5 of the Raker Act provides that the work shall be diligently prosecuted and if not the grantee shall "FORFEIT" all rights *to any part of the project* not so prosecuted, and that the Attorney General on request shall bring suit to forfeit all rights.

Section 6 provides that if electrical energy shall be sold to a corporation for re-sale, that in case of an attempt to so sell the same, then "this grant shall *revert* to the Government of the United States." In this case "revert" means that it shall be forfeited. (R. 19.)

Section 9 (u) provides that the Attorney General shall commence suits "for the purpose of enforcing and carrying out the provisions of this Act." (R. 34.)

Three provisions are made for the violation of the provisions of the Act, First, Forfeiture, Second, Reversion, and Third, Action to enforce the provisions of the Act.

The remedy for selling to a corporation for re-distribution is a forfeiture of the whole grant.

This suit is brought under Section 9 (u) of the Raker Act, (R. 7) for the alleged purpose of enforcing the Act; that is the Government will stop the sale of the electric energy to the Pacific Gas & Electric Company until the City complies with the Raker Act and distributes its own electricity; this means that the Electors of the City of San Francisco will be compelled



by the United States to erect its own plant. This is coercion pure and simple.

This remedy is a forfeiture of the \$2,000,000.00 received annually for the purpose of making the Electors of the City of San Francisco do something that they never agreed to do. Here we have the Court enforcing a forfeiture. The general rule is that a court of equity will not enforce but on the contrary will relieve from a forfeiture.

Dated: San Francisco, Cal.

March ....., 1939.

W. H. METSON,  
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